IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.334 OF 2003

Sau.Sunita Mahadev Chavan Applicant

versus

Mahadev Baban Chavan Respondent

Ms.Gauri Godse - adv. for applicant.

Mrs.Indrayani M. Koparkar for R-1.

Mr.S.S.Pednekar, APP for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 15th December 2005

PC :

1. Rule. Respondents waive service. Heard forthwith by consent.

2. This is a writ petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure by the original applicant wife, who had filed proceedings for maintenance under section 125 of the Cr.P.C..

3. Upon an application by the applicant wife,

the first respondent husband was put to notice and after considering rival contentions the learned Magistrate namely JMFC, Khed, District Pune allowed the applicant's application being Criminal Miscellaneous Application No.188 of 1998 vide order dated 29th June 2001.

4. The order passed on the said application reads thus :-

ORDER

The application is allowed as under :

1) The N.A. shall pay Rs.350/- per month to the Applicant No.1 and Rs.250/- per month to the Applicant No.2 towards their maintenance from the date of Application i.e. 8.10.1998.

2) The N.A. shall pay Rs.300/- to the Applicant No.1 as the costs of this application.

3) A copy of the Order be provided to the Applicants "Free of Costs" on her application."

The applicant had prayed for maintenance for herself as also for her daughter Sampada. The daughter is admittedly born from the wedlock of the applicant with the first respondent herein.

5. Aggrieved and dissatisfied with the grant of

maintenance in favour of the applicant-wife, the first respondent husband preferred Criminal Revision Application No.465 of 2001. The learned Additional Sessions Judge, Pune interfered in revisional jurisdiction with the order of JMFC insofar as it awards maintenance to the applicant wife. He was pleased to quash and set aside the same on the ground that the applicant is disentitled from claiming maintenance as she is living in Adultery with one Sunil Jadhav. Consistent with this finding and conclusion, the order of maintenance in favour of the applicant wife was quashed and set aside.

6. There is no dispute as far as maintenance awarded to the daughter, Sampada. The husband has no grievance even today with regard to the same. His counsel makes a statement that maintenance as from the date of application in the Trial Court is paid and would also be paid hereafter.

7. Ms.Godse in support of this petition assails the order of the revisional Court on the ground that it is vitiated by errors apparent on the face of record and is wholly perverse. The learned Sessions Judge was in error in

interfering with an order of maintenance in favour of applicant-wife on the ground that the applicant is living in adultery. The learned Sessions Judge, according to Ms.Godse, was in error in concluding that the husband has proved that the applicant-wife is living in adultery with Mr.Jadhav. She submits that the evidence of wife which has been referred to, in no way, concludes that the applicant-wife has admitted her relationship with said Jadhav. All that was done in the Trial Court is to confront the wife with some letters. Neither the applicant-wife has admitted that the letters are in her handwriting nor she admitted contents thereof. In fact, she has denied having written any such letter. It is in these circumstances, that the learned Sessions Judge was in error in relying upon the evidence of the applicant-wife and holding that she admits that she is living in adultery. That apart, she submits that the words "living in adultery" appearing in section 125(4) have a specific legal connotation. It will have to be established that the relationship is such as would disentitle the wife from claiming anything from her husband. There is absolutely no finding to the effect that the applicant-wife is living in adultery.

8. On the other hand, learned counsel for the husband submits that the revisional court has stepped into to correct an error and merely because this Court is of a different opinion, that would not justify interference under Article 227 of the Constitution of India. Moreso, with a pure finding of fact. What this Court would be doing is reappreciating and reappraising the materials which is impermissible in writ jurisdiction. Consequently, petition be dismissed.

9. With the assistance of learned counsel appearing for both sides, I have perused the judgement of Trial Court as also that of the Revisional Court. The Trial Court had specifically framed an issue being issue no.4. The burden thereunder was on the husband to prove that wife was living a adulterous life. As far as issue no.4 is concerned, although the same is considered along with other issues, the learned Magistrate has after appraising the entire material, recorded a specific finding that the conduct of the husband in making allegations of adulterous life, is one of the circumstance to hold that wife was illtreated by her husband and

neglected. The entire materials have been perused with the assistance of learned counsel by me. The Trial Court has referred to not just one plea of adulterous life of wife but also pleas of the applicant about her husband having performed second marriage. The Trial Court has also referred to the so called joint visit of Jadhav along with the applicant-wife to the Police Station. The reference is also made to the letters which were handed in by the said Jadhav to the applicant no.1 at the Police Station. It has been observed by the Trial Court that none have been examined by the husband to prove the allegations of such letters having been handed over or that the letters were in fact addressed by the applicant-wife. The failure to examine one Bhimabai and Ashok as also the Police Officer, has been found to be fatal. The discussion on this aspect is so elaborate that each and every piece of evidence has been dealt with in detail by the learned Trial Judge. In these circumstances that the application of the applicant herein was allowed.

10. The Revisional Court does not in any manner fault the approach of the Trial Court in accepting the version of wife. On the other

hand, on self same materials the Revisional Court has concluded that it is sufficient to record a finding that the applicant-wife is living in adultery. After having perused the order of the Revisional Court and more particularly paras 11 and 12, I am of the view that the Revisional Court ought not to have interfered with a finding of fact recorded by the Trial Court. Moreso, when it is rendered relying upon all materials produced before it. It is not a case where wife failed to prove her case or has admitted the allegation. It is not a matter where sufficient opportunity to the husband was denied. The approach of the learned Sessions Judge is erroneous in law. He has misdirected himself clearly. As pointed above, the learned Sessions Judge lost sight of the fact that the allegation of "Living in Adultery" would not mean a stray act or a single lapse from virtue. It connotes a course of Adulterous conduct more or less continuous and not occasional. Therefore, there has to be a proper and complete proof in that behalf.

11. However, the learned counsel for the respondent states that if this Court is of the aforesaid view and opinion, then instead of

completely shutting out the husband, an opportunity should be given to him to substantiate his pleas raised in the revision application. For that purpose, Revision application be restored to file for being dealt with afresh in accordance with law uninfluenced by the earlier observations. She submits that to prove his bona fides the husband would deposit a sum of Rs.50,000/- (Rs.Fifty thousand only) in the Trial Court within a period of eight weeks from today and then the revision application be restored to the file of Sessions Court.

12. Ms.Godse states that the Trial Court having gone into the materials, this Court should pass final orders and not allow the husband to urge self same contentions.

13. In my view, interest of justice would be subserved if the statement of the learned counsel for the husband is accepted and an opportunity is given to the husband to show his bona fides in the matter, but without disturbing the order of maintenance in favour of minor daughter. This course is adopted by me because it is brought to my notice that the husband has filed a matrimonial petition seeking divorce from the

applicant-wife and that matrimonial petition is pending before the Civil Court, Pune. In the circumstances, following order.

14. ORDER :

a) Rule is partly made absolute inasmuch as the order of Sessions Judge in Criminal Revision Application No.465 of 2001, dated 27th December 2002 is quashed and set aside.

b) on the condition that respondent no.1 deposits in the Trial Court (JMFC, Khed) a sum of Rs.50,000/- (Rs.Fifty thousand only) within a period of eight weeks from today. Criminal Revision Application No.465 of 2001 to stand restored to the file of Additional Sessions Judge, Pune;

c) The Criminal Revision Application No.465 of 2001 shall then be dealt with and disposed of on merits in accordance with law uninfluenced by order passed on 27th December 2002, within a period of twelve weeks, from the date of deposit of the amount;

d) Needless to state that if the amount is not

deposited within the time stipulated above, the order of JMFC, Khed to operate and the applicant-wife would be entitled to recover the amount of maintenance granted therein in addition to the payment to the minor daughter in accordance with law;

e) In case amount of Rs.50,000/- is deposited, liberty is granted to the applicant-wife to withdraw a sum of Rs.20,000/- (Rs.Twenty thousand only);

f) Such withdrawal would be without prejudice to the rights and contentions of the husband in both revision application as well as application for divorce;

g) All contentions of both sides are expressly kept open;

h) Learned Judge trying the matrimonial petition shall endeavour to dispose of the same within a period of six months from this order.

(S.C.DHARMADHIKARI, J.)